

**REMARKS / ARGUMENTS**

Claims 1-41 are pending in the instant application, of which claims 1-35 were previously presented and claims 36-41 are new claims. Claims 1, 4-5, 8-9, 14, 17-18, 26 and 33 have been amended to clarify the language. The Applicant respectfully submits that claims 1-41 define patentable subject matter in view of the following remarks and arguments.

Claims 18, 20, 22-29, 31 and 32 are rejected under 35 USC 102(e) as anticipated by Philbrick et al. (US Pub. No. 2001/0037406, hereafter Philbrick). Claims 1-15 are rejected under 35 USC 103(a) as being unpatentable over Applicant's Admitted Prior Art (background of the invention and FIG. 1-5, hereafter AAPA) and further in view of Philbrick. Claims 33-35, 30 are rejected under 35 USC 103(a) as being unpatentable over Philbrick as applied to claim 26 above, and further in view of Microsoft (Winsock Direct and Protocol Offload on SANs, 03/03/2001). Claims 16-17 are rejected under 35 USC 103(a) as being unpatentable over AAPA-Philbrick, as applied to claims 1 and 14 above, and further in view of Microsoft. Claims 19 and 21 are rejected under 35 USC 103(a) as being unpatentable over Philbrick, in view of what has been known in the art.

**I. REJECTION UNDER 35 U.S.C. § 102**

MPEP 2131 states:

"[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See MPEP at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

**A. Philbrick Does Not Anticipate Claims 18, 20, 22-29, 31 and 32**

The Applicant turns to the final rejection of claims 18, 20, 22-29, 31-32 under 35 U.S.C. § 102(e) as being anticipated by Philbrick. Without conceding that Philbrick qualifies as prior art under 35 U.S.C. 102(e), the Applicant respectfully traverses this rejection as follows.

**A(1) Independent Claim 18**

With regard to the final rejection of independent claim 18 under 35 U.S.C. § 102(e), the Applicant has amended claim 18 and submits that Philbrick does not disclose or suggest at least the limitation of "a single Ethernet connector, ...can concurrently handle a plurality of different types of traffic," as recited in Applicant's claim 18.

In the Office Action, the Examiner asserts that Philbrick discloses the following:

"an Ethernet connector coupled to the integrated chip ([0066] lines 12-15, Ethernet connector 424 which is a MAC controller)" wherein the Ethernet connector and the integrated chip can handle a plurality of different types of traffic ([0065] lines 15-21, iSCSI and TCP/IP)."

See the Office Action, page 6. The Examiner seems to equate the MAC controller 424 of Philbrick to read on "a single Ethernet connector," as recited in claim 18 by the Applicant. The Examiner relies for support citing the following:

"The INIC in this example has network connections or ports that are connected to first LAN 414, second LAN 416, first SAN 418 and second SAN 420."

See Philbrick ¶[0065] lines 7-10. The Applicant respectfully disagrees and submits that Philbrick clearly discloses that the INIC is connected to the LAN 414, second LAN 416, first SAN 418 and second SAN 420 **through multiple network ports**, instead of "a single Ethernet connector," as recited in Applicant's claim 18.

Furthermore, the Examiner asserts that Philbrick's disclosure of the SANs running on iSCSI or SEP to read on "concurrently handle a plurality of different types of traffic. The Examiner relies for support on the following citation of Philbrick:

"SANS 418 and 420 may run a storage protocol such as SCSI over TCP/IP or SCSI Encapsulation Protocol (SEP)..."

See Philbrick at ¶[0065], lines 15-21. The Applicant respectfully disagrees and points out that Philbrick clearly teaches that the SANS 418 and 420 at anytime **runs on only one type of traffic**, i.e. iSCSI (or SEP), instead of running both the TCP/IP traffic and the iSCSI traffic concurrently as the Examiner alleges.

Contrary to the Examiner's assertion that Philbrick teaches both iSCSI and TCP/IP are handled by the SANS 418 and 420, thus equating the iSCSI and TCP/IP to read on "handle a plurality of different traffic types," as recited in claim 18, the Applicant further points out that Philbrick discloses only one type of data is being handled at the transport layer of the network port (in the MAC 424): either the TCP or STP traffic, not both. Specifically, Philbrick states:

"... either TCP or SAN transport protocol (STP) at the transport layer, depending primarily upon whether data is being transferred over a WAN or the Internet, for which TCP is used, or data is being transferred over a LAN or SAN, for which STP is used"

See Philbrick at ¶[0065], lines 25-29. Clearly, Philbrick discloses that the type of traffic is dependent on the type of data arriving at the network port, if over the WAN, TCP is used, or if over a LAN or SAN, STP is used. There is no disclosure or suggestion in Philbrick that more than one type of traffic is handled at the network port at anytime. Therefore, the Applicant maintains that Philbrick's disclosure of handling **only one type of traffic at anytime** at the network port refutes the assertion that Philbrick discloses or suggests "**concurrently** handles a plurality of different types of traffic," as recited by the Applicant in claim 18.

Accordingly, the Applicant maintains that Philbrick does not disclose or suggest at least the limitations "a **single Ethernet connector**, ... can **concurrently handle a plurality of different types of traffic**," as recited in claim 18. Therefore, independent claim 18 is not anticipated by Philbrick and should be allowable. The Applicant respectfully requests that the rejection of independent claim 18 under 35 U.S.C. § 102(e) be withdrawn. Furthermore, The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of independent claim 18 should such a need arise.

**A(2) Dependent Claims 20 and 22-25**

Based on at least the foregoing, the Applicant believes the rejection of independent claim 18 under 35 U.S.C. § 102(e) as being anticipated by Philbrick has been overcome and requests that the rejection be withdrawn. Additionally, claims 20, 22-25 depend from independent claim 18, and are, consequently, also respectfully submitted to be allowable.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 20 and 22-25 should such a need arise.

**B(1). Independent Claim 26**

With regard to the final rejection of independent claim 26 under 35 U.S.C. § 102(e), the Applicant submits that Philbrick does not disclose or suggest at least the limitation of “concurrently handling the plurality of different types of traffic ... via the single L2 connector,” as recited by the Applicant in claim 26. The Applicant points out that claim 26 is allowable at least based on the argument stated above in section A(1).

Furthermore with regard to the allowability of claim 26, the Applicant submits that Philbrick does not disclose or suggest the limitation of “routing a plurality of different types of traffic for a server via a single fabric comprising a single layer 2 (L2) connector,” as recited in claim 26 by the Applicant.

The Examiner states in the Office Action that Philbrick teaches:

“using a single fabric for a plurality of different types of traffic (FIG. 6, single path from a Ethernet connector 424 to processor 408)”

See the Office Action in page 7. The Examiner relies for support on Philbrick in FIG. 6 and seems to equate the single path connecting the Ethernet connector 424 to processor 408 of Philbrick to read on “...for a server via a **single fabric** ...,” in claim 26. The Applicant respectfully disagrees and submits that Philbrick in FIG. 6 clearly does not disclose or suggest that the single path **within the INIC** between the connector 424 (MAC 424) and the processor 408 **400** to be used “...for a server...”

Accordingly, based on the foregoing arguments that Philbrick does not disclose or suggests the limitation of "... **different types of traffic for a server via a single fabric ... concurrently handling the plurality of different types of traffic for the server via the single L2 connector,**" the Applicant submits that claim 26 is not anticipated by Philbrick and should be allowable. The Applicant respectfully requests that the rejection of independent claim 26 under 35 U.S.C. § 102(e) be withdrawn. Furthermore, The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of independent claim 26 should such a need arise.

**B(2) Dependent Claims 27-29 and 31-32**

Based on at least the foregoing, the Applicant believes the rejection of independent claim 26 under 35 U.S.C. § 102(e) as being anticipated by Philbrick has been overcome and requests that the rejection be withdrawn. Additionally, claims 27-29 and 31-32 depend from independent claim 26, and are, consequently, also respectfully submitted to be allowable.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 27-29 and 31-32 should such a need arise.

## II. REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teaching. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

See MPEP at § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a *suggestion or motivation in the reference* to do so'" (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP § 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion..., citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.



The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**A. The Proposed Combination of AAPA and Philbrick Does Not Render Claims 1-15 Unpatentable**

The Applicant turns to the rejection of claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Philbrick.

**A(1). Independent Claim 1**

With regard to the final rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of AAPA and Philbrick does not disclose or suggest at least the limitation of “at least one of the first server, the second server and the third server handles a plurality of different traffic types concurrently over a single fabric using a single connector,” as recited in claim 1 by the Applicant.

The Examiner concedes that:

“AAPA does not disclose: wherein at least one of the first server, the second server and the third server handles a plurality of different traffic types over a single fabric.”

See the Office Action in page 9 ¶[27]. The Examiner then turns to Philbrick for support and states the following:

"However, Philbrick discloses: wherein at least one of the first server, the second server and the third server handles a plurality of different traffic types **over a single fabric** (fig. 6, a server handles iSCSI and TCP/IP over a single fabric connecting the Ethernet connector 424 and processor 408)."

See the Office Action in page 9 ¶[27]. Again, the Examiner is referred to the arguments in subsection B(1) above that Philbrick never discloses nor suggests that the single path connection between the Ethernet connector 424 and the processor 408 within the INIC 400 is used to connect to "a server", let alone to "each of the first server, the second server and the third server," as recited in claim 1 by the Applicant. Therefore, the Applicant maintains that Philbrick does not disclose or suggest that the single path in the INIC 400 is used to connect to any server.

In addition, the Applicant submits that Philbrick does not disclose or suggests the limitation of "...handles a plurality of different traffic types concurrently over a single fabric using a single connector," as recited in claim 1 by the Applicant. The Examiner is again referred to the Applicant's arguments in subsection A(1) and B(1), where the Applicant has pointed out that Philbrick clearly discloses or suggests that only one type of traffic is handled at each of the network connection ports at the MAC 424: i.e. the iSCSI protocol data type

(LAN/SAN) or TCP/IP protocol data type (WAN) (See Philbrick ¶[0065] lines 25-29). At least on this basis, the Applicant maintains that Philbrick neither discloses nor suggests "concurrently handling a plurality of traffic types over a single fabric using a single connector," as recited in claim 1 by the Applicant.

Therefore, the Applicant maintains that Philbrick's "single fabric" does not overcome the deficiencies of AAPA.

Furthermore, the Applicant maintains that the combination of AAPA and Philbrick does not disclose or suggest the limitation of "concurrently handling a plurality of traffic types over a single fabric using a single connector," as recited in claim 1 by the Applicant.

Accordingly, the Applicant submits that combining AAPA and Philbrick does not establish a prima facie case of obviousness under 35 U.S.C. § 103(a) and claim 1 should be allowable. The Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 103(a) be withdrawn. Furthermore, The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of independent claim 1 should such a need arise.

**A(2) Dependent Claims 2-15**

Based on at least the foregoing, the Applicant believes the rejection of the amended independent claim 1 under 35 U.S.C. § 103(a) as being rendered obvious by combining AAPA and Philbrick has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-15 depend from the amended independent claims 1, and are, consequently, also respectfully submitted to be allowable and requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 2-15 should such a need arise.

**B. The Proposed Combination over Philbrick and Microsoft Does Not Render Claims 33-35, 30 Unpatentable**

The Applicant turns to the rejection of claims 33-35, 30 under 35 U.S.C. § 103(a) as being unpatentable over Philbrick as applied to claim 26 above, and further in view of Microsoft.

**B (1) Independent Claim 33**

With regard to the rejection of independent claim 33 under 35 U.S.C. § 103(a), the Applicant submits that claim 33 and claim 26 are similar in scope and

in many respect. The Applicant submits that the same argument to claim 26 is applicable to claim 33, namely, Philbrick's single fabric does not disclose or suggest "said single fabric ... concurrently handle a plurality of different types of traffic," as recited in claim 33 by the Applicant.

Accordingly, the Applicant submits that a prima facie case of obviousness cannot be established to reject claim 33 since the combination of Philbrick and Microsoft does not disclose or suggest at least the limitation of "said single fabric ... concurrently handle a plurality of different types of traffic," as recited in Applicant's claim 33. Therefore, the Applicant respectfully requests that the rejection of claim 33 under 35 U.S.C. § 103(a) be withdrawn.

Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of claims 33 should such a need arise.

## **B(2) Dependent Claims 34-35 and 30**

Based on at least the foregoing, the Applicant believes the rejection of the amended independent claims 26 and 33 have been overcome. Additionally, claims 30 and 34-35 depend from the respective independent claims 26 and 33, and are, consequently, also respectfully submitted to be allowable and requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 30 and 34-35 should such a need arise.

**C. The Proposed Combination of AAPA-Philbrick-Microsoft Does Not Render Claims 16, 17, 19 and 21 Unpatentable**

The Applicant submits that respective dependent claims 16, 17, 19 and 21 depend directly or indirectly from the respective amended independent claims 1 and 18, and are allowable for at least the same rationale as discussed above for the respective amended independent claims 1 and 18. Accordingly, the Applicant respectfully submits that dependent claims 16, 17, 19 and 21 are also allowable and requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 16, 17, 19 and 21 should such a need arise.

**D. New Claims 36 - 41**

The Applicant turns to the new claims 36 - 41. With regard to independent claim 36, the Applicant submits that Philbrick does not disclose or suggest " an integrated circuit ...concurrently processing of a plurality of **different types of**

**traffic...over a single connector,**" as recited in claim 36. Therefore, the Applicant submits that claim 36 should be allowable over Philbrick.

Likewise, independent claim 39 is a method claim similar in many respects to claim 36. Therefore, the Applicant respectfully submits that claim 39 should be allowable based on the same rationale presented in claim 36.

Dependent claim 37-38 and 40-41 depend from respective independent claims 36 and 39 and submits to be allowable for the same rationale presented in claim 36.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of claims 36-41 should such a need arise.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all pending claims 1-41 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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